A.F.R.

13.3.07

(15)

HIGH COURT OF CHHATTISGARH AT BILASPUR

M.A. (C) No. 300/2007

Single Bench: Hon'ble Shri Dilip Raosaheb Deshmukh, J.

Appellant United India Insurance Company Limited, Through: Its Branch Manager, Branch Office, T.P. Nagar, Korba, Tah. & Distt-Korba (CG)

Versus

Respondents

1. Munna Singh Raj, S/o Late Luku Singh Raj, aged 40 years, R/o vill-Barpali, Tah.-Kartala, Distt.-Korba (CG)
2. Dharmpal S/o-Ramadhar Kenwat, Aged about-33 years, R/o-Vill.-Morga, P.S.-Bango, Tah.Katghora, Distt.-Korba (CG)
3. Sunil Kumar Agrawal S/o-Late Ramkumar Agrawal, R/o-vill.&Post-Morga, P.S.-Bango, Tah.Katghora, Distt.-Korba (CG)

Present: Shri Dashrath Gupta, learned counsel for the appellant.

ORAL ORDER

(Passed on 13th March, 2007)

The following oral order of the Court was passed by Dilip Raosaheb Deshmukh, J.

2. Heard on I.A. No. 709/2007. Learned counsel for the appellant submits that since this M.A.C. is against an order under Section 140 of the Motor Vehicles Act, the question of filing of a certified copy of the order under Section 170 of the Motor Vehicles Act does not arise. Considered and allowed.

3. Heard on admission. The appellant has impugned the order dated 20.12.2006 passed by the Additional M.A.C.T., Korba in claims case No. 104/2006 whereby the appellant/insurer was directed to pay interim compensation of Rs. 50,000/- to the legal representatives of the deceased.

4. Learned counsel for the appellant does not dispute the following facts:-

(16)

A/ that the deceased was travelling in a light motor vehicle bearing No. CG 12-9599 on 2/5/2005.

B/ death of Rai Singh resulted due to the accident by the aforesaid vehicle, and

C/ that the above mentioned vehicle was insured by the appellant on the date of the accident.

5. Learned counsel for the appellant contended that since the deceased was travelling in a goods vehicle which was being used for carrying passengers at the time of the accident, there was a clear breach of policy and therefore, the insurer is not liable to pay interim compensation under Section 140 of the Motor Vehicles Act. Reliance was placed on *The United India Insurance Co. Ltd. Vs. Kamalalochan kamalo and others* **A.I.R. 1995 Orissa 213.**

6. Having heard the learned counsel for the appellant, I have perused the impugned order. The arguments of the learned counsel for the appellant have no force in view of the admitted facts mentioned above. In an application under Section 140 of the Motor Vehicle Act, the M.A.C.T. is not required to enter into an enquiry whether there was breach of policy or not. If at the time of final disposal of the application for compensation, the M.A.C.T ~~was~~ is of the view that there was a fundamental breach of policy a right could be given to the insurer to recover the compensation from the owner. In view of the existence of the facts mentioned in paragraphs 4-A, B & C, the learned M.A.C.T. was wholly justified in awarding the interim compensation of Rs. 50,000/- against the appellant/Insurer.

7. In this view of the matter, the impugned order cannot be faulted with. This appeal being devoid of merit is dismissed at the stage of admission.

Sd/-
Dilip Raosaheb Deshmukh
Judge

Priya